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CHARLES ELMORE

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1934.

No. 54.

E. Forrest Mitchell, Insurance Commissioner of the State of California,
Petitioner,

v.

Bertha E. Maurer and International Re-Insurance Corporation, a Corporation,
Respondents.

RESPONDENTS' BRIEF.

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Bertha E. Maurer and International Re-Insurance Corporation, a Corporation,
Respondents.

RESPONDENTS' BRIEF.

In this case a writ of certiorari was granted on October 8th, 1934, directed to the United States Circuit Court of Appeals for the Ninth Circuit. The order of this court, granting the writ, limited the review to the question of the validity of the appointment of ancillary receivers upon the petition of the primary receivers, and directed attention to the case of *McCandless v. Furlaud,* No. 11 on the docket for the 1934 term of this court.

The decree of the court below, to which the writ was directed, affirmed two orders of the District Court of the

United States for the Southern District of California, one of which denied the petitioner's motion to vacate the order of the District Court appointing receivers [R. pp. 50-51], and the other of which denied petitioner's motion for a rehearing of his original motion to vacate [R. p. 69].

I.

OPINION BELOW.

The opinion of the Circuit Court of Appeals is contained in pages 97-133 of the record and is reported in 69 F. (2d) 233.

II.

STATEMENT OF THE CASE.

Respondent International Re-Insurance Corporation is a corporation organized and existing under the laws of the state of Delaware and, prior to April 19th, 1933, conducted an insurance business in practically every state of the United States, including California. [R. p. 4.] On April 19th, 1933, in an action brought by a creditor for the appointment of general receivers in the Court of Chancery in the state of Delaware, in and for New Castle county, entitled "Bertha E. Maurer, plaintiff, vs. International Re-Insurance Corporation, a corporation, respondent," Arthur G. Logan of Wilmington, Delaware, Carl M. Hansen of Philadelphia, Pennsylvania, and George DeB. Keim of Edgewater Park, New Jersey, were appointed receivers for all of the property and assets of said International Re-Insurance Corporation. [R. pp. 30-36.]

Subsequent to their appointmment, said Arthur G. Logan, Carl M. Hansen and George DeB. Keim, as primary receivers of respondent corporation in the state of Delaware, filed, in the District Court of the United States for the Southern District of California, a bill of complaint against International Re-Insurance Corporation for the appointment of ancillary receivers. [R. pp. 3-7.] The allegations of this bill and its amendments will be hereinafter noted.

On April 25th, 1933, with leave of court [R. p. 37], amendments to this bill were filed in the District Court. By these amendments there were added to the original bill and made a part thereof, exemplified copies of the Bill for Appointment of Receivers filed in the Delaware Court of Chancery [R. pp. 20-25] and the order appointing primary receivers in that court. [R. pp. 30-36.]

Subsequent to the filing of the amendments to the bill, and on April 25th, 1933, respondent International Re-Insurance Corporation filed its answer [R. pp. 38-39], by which the allegations of the bill of complaint as amended were admitted and the respondent joined in the request for the appointment of ancillary receivers.

Thereafter the petitioner, who was not a party to the proceeding for the appointment of receivers in the District Court, served and filed a motion to vacate the order appointing receivers, to dissolve the restraining order, to dismiss the petition for the appointment of receivers, and to reexamine the order appointing receivers. [R. pp. 41-

45.] This motion was denied. A subsequent motion for rehearing was made, heard and denied. The writ of certiorari herein is directed to the judgment and decree of the Circuit Court of Appeals for the Ninth Circuit, affirming these orders.

III.

ARGUMENT.

Summary of Respondents' Argument.

Point A.

THE PRIMARY RECEIVERS IN DELAWARE WERE ENTITLED, AS QUASI-ASSIGNEES, TO MAINTAIN THE ACTION AGAINST RESPONDENT CORPORATION FOR THE APPOINTMENT OF ANCILLARY RECEIVERS IN THE FEDERAL DISTRICT COURT.

Point B.

THE APPOINTMENT OF ANCILLARY RECEIVERS UPON THE BILL OF THE PRIMARY RECEIVERS WAS VALID.

1. The Appointment of Ancillary Receivers Upon the Petition of Primary Receivers Has Been Approved by Federal and State Courts.

2. The Federal District Courts, by Virtue of Comity, Have Jurisdiction to Appoint Receivers Ancillary to the Primary Receivership Proceedings, Without Regard to Jurisdictional Requirements.

POINT A.

The Primary Receivers in Delaware Were Entitled, as Quasi-Assignees, to Maintain the Action Against Respondent Corporation for the Appointment of Ancillary Receivers in the Federal District Court.

Since the order of this court, in granting the writ of certiorari, directed attention to the case of *McCandless v. Furlaud*, which is now under consideration by the court, we desire, at the outset, to direct the court's attention to fundamental differences between the facts presented for decision in *McCandless v. Furlaud* and in the instant case and the legal significance of these differences.

In the *McCandless* case the primary receivers were acting under the appointment of a Federal District Court, whereas in the instant case the primary receivers were acting under the appointment of the Delaware Chancery Court. In the *McCandless* case no process was issued against the respondent corporation and no appearance was entered for respondent, while in the instant case the respondent corporation regularly filed its answer, submitted to the jurisdiction of the court and joined in the request for the appointment of ancillary receivers. Because of these differences, we believe that the questions presented for decision in the *McCandless* case are not present in the instant case, and that the primary receivers in the instant case were entitled to maintain and did, in fact, institute and maintain an action for the appointment of ancillary receivers, which was clearly within the jurisdiction of the Federal District Court to entertain.

If we correctly understand the decision of the Circuit Court of Appeals for the Second Circuit in *McCandless v.*

Furlaud, 68 F. (2d) 925, and the issues presented for the decision of this court in the *McCandless* case, the first question was whether a Federal court had jurisdiction to appoint a primary receiver with power to sue outside of the territorial jurisdiction of the court. The facts involved in the instant case remove it from the scope of this question. As we have heretofore pointed out, the primary receivers in the instant case were appointed by the Court of Chancery in the state of Delaware, in and for New Castle county. [R. pp. 30-36.] Under section 3884 of the Revised Code of Delaware of 1915, these receivers were vested with title to all of the property of the corporation, except real property not situated in Delaware. While this court held, in *Booth v. Clark,* 17 How. 322, 58 U. S. 322, 15 L. Ed. 164, that the principle of comity was not applicable in the Federal courts to an action brought by a receiver outside the territorial jurisdiction of the court of appointment, this court, by a long line of decisions, has grafted to this rule an exception, that a receiver may maintain such an action where, under the laws of the state of his appointment, he is constituted a quasi-assignee of the property of the insolvent corporation.

Relfe v. Rundle, 103 U. S. 222, 26 L. Ed. 337;

Bernheimer v. Converse, 206 U. S. 516, 51 L. Ed. 1163;

Converse v. Hamilton, 224 U. S. 243, 56 L. Ed. 749;

Sterrett v. Second Nat. Bank, 248 U. S. 73, 63 L. Ed. 135;

Keatley v. Furey, 226 U. S. 399, 57 L. Ed. 273;

Oakes v. Lake, 78 L. Ed. 15 (Adv. Op.) (Nov. 6, 1933).

Under the above-cited provision of the Delaware law the primary receivers in the instant case were quasi-assignees, within the meaning of this rule.

Ward v. Foulkrod, 264 Fed. 627;

Morris v. Wisconsin Hydro Electric Co., 4 F. Supp. 991.

The other question decided by the Circuit Court of Appeals and presented here in the *McCandless* case was whether or not the proceedings, there in question, constituted a suit or action within the equity jurisdiction of the Federal court, inasmuch as no process was issued and no appearance entered by the respondent corporation. An examination of the instant proceedings discloses that such a suit or action was instituted.

In the instant case, the bill as amended, filed by the primary receivers in the Federal court in California [R. pp. 3-7, 9-38] alleged that the petitioners had been appointed receivers for the respondent corporation in the Delaware proceedings, which proceedings had been brought for the purpose of having receivers appointed for all of the property and assets of the corporation, wherever situated [R. p. 4]; that the corporation owned property and assets in the city of Los Angeles, state of California; that certain creditors of the respondent corporation were threatening suits and attachments against the property of the corporation, and that the corporation had no defense to these threatened suits, and that, if such attachments were levied, irreparable damage would result to the creditors of the corporation and to the primary receivership. [R. p. 5.] The bill, as amended, had attached thereto, and there were incorporated therein by reference, exem-

plified copies of the Bill for Appointment of Receivers in the Delaware court [R. pp. 20-25] and the order appointing the primary receivers in that court. [R. pp. 30-36.] By thus attaching and incorporating by reference the Delaware bill, the bill alleged that the complainant in the Delaware proceedings was a judgment creditor in the sum of $5,000.00 [R. pp. 21-22], that the respondent corporation was possessed of certain property, but was insolvent and was unable to meet its current and maturing obligations as they came due [R. p. 23], and that there were pending against the respondent corporation other suits and judgments which the corporation did not have funds or property available to pay. [R. p. 23.] Also, the allegations of residence showed that the primary receivers were citizens of states other than that of Delaware, and that the respondent was a Delaware corporation. Further, the bill invoked the jurisdiction of the court for the purpose of administering and marshalling the assets of the corporation within the jurisdiction of the court, "taking such steps with respect to the property and assets of said respondent as to this court shall seem meet and proper to protect the interests of the creditors of said respondent in this jurisdiction, and causing the net balance of said property and assets, after such steps as this court may take in the interests of creditors of respondent in this jurisdiction, to be delivered to the court of primary jurisdiction * * * and for the purpose of protecting and preserving the assets of respondent within the jurisdiction of this court from dissipation and waste until

this court makes its final determination on the bill here presented." [R. p. 11.]

Respondent corporation regularly made its appearance in this action by the filing of its answer [R. pp. 38-39], in which the respondent corporation admitted the allegations of the bill and joined in the prayer for the appointment of receivers.

It thus appears that the primary receivers had instituted a suit or action against the respondent corporation, which was clearly within the equity jurisdiction of the court, and that the respondent corporation submitted to the jurisdiction of the court. In view of these facts, the proceedings can in no sense be regarded as summary, *ex parte,* or as a subservient adjunct to the Delaware proceedings. The primary receivers sought to invoke, and the court exercised, the independent equity jurisdiction which the court clearly possessed.

Sands v. E. S. Greeley & Co., 88 Fed. 130 (C. C. A., Second Circuit);

Shinney v. North American Savings, Loan & Building Co., 97 Fed. 9 (C. C. D. Utah);

Rust v. United Waterworks Co., 70 Fed. 129 (C. C. A., Eighth Circuit);

Ward v. Foulkrod, 264 Fed. 627 (C. C. A., Third Circuit);

Seested v. Bonfils, 33 F. (2d) 185 (D. C. D. Colo.);

Trustees System Co. of Pennsylvania v. Payne, 65 F. (2d) 103 (C. C. A., Third Circuit).

Since the bill invoked the jurisdiction of the court first to protect local creditors, it was not subject to the objection, voiced by this court in *Booth v. Clark,* 17 How. 322, 58 U. S. 322, 15 L. Ed. 164; *Great Western M. & M. Co. v. Harris,* 198 U. S. 561, 49 L. Ed. 1163, and in *Sterrett v. Second Nat. Bank,* 248 U. S. 73, 63 L. Ed. 135, to the effect that if a foreign receiver were permitted, by reason of comity, to sue and recover property or funds and withdraw them from the jurisdiction, local creditors would be prejudiced. In fact, the procedure adopted explicitly conformed to the law as interpreted by this court in *Sterrett v. Second Nat. Bank, supra,* where it was said (63 L. Ed. 137):

> "Since the decision of this court in Booth v. Clark, 17 How. 322, 15 L. ed. 164, it is the settled doctrine in Federal jurisprudence that a chancery receiver has no authority to sue in the courts of a foreign jurisdiction to recover demands or property therein situated. The functions and authority of such receiver are confined to the jurisdiction in which he was appointed. The reasons for this rule were fully discussed in Booth v. Clark, and have been reiterated in later decisions of this court. * * * This practice has become general in the courts of the United States, and is a system well understood and followed. It permits an application for an ancillary receivership in a foreign jurisdiction where the local assets may be recovered, and, if necessary, administered."

Although, as we have pointed out, we believe the bill contained all of the essential allegations to invoke the

equity jurisdiction of the court, if the bill was in any way deficient in this connection, the defects were waived by the answer of the respondent corporation.

Pusey & Jones Co. v. Hanssen, 261 U. S. 491, 500, 67 L. Ed. 763;

Re Metropolitan Railway Receivership, 208 U. S. 90, 52 L. Ed. 403.

Also, any objection that non-residents of California were suing a Delaware corporation in a Federal court in California was waived by the answer of the respondent.

Central Trust Co. v. McGeorge, 151 U. S. 129, 132, 38 L. Ed. 98.

On this phase of the argument, therefore, we submit that the primary receivers in the Delaware court of chancery were quasi-assignees of the property of the corporation under the Delaware law, and as such were entitled to institute and maintain an action in the Federal court in California, and that they actually did institute an action against the respondent corporation which was within the jurisdiction of the Federal court to entertain. The brief of respondents in the *McCandless* case, it is interesting to note, concedes the rules of law hereinabove discussed and their application to the instant case, and there is nothing in the decision of the Circuit Court of Appeals in that case that could be construed as authority against the proceedings in the instant case.

POINT B.

The Appointment of Ancillary Receivers Upon the Bill of the Primary Receivers Was Valid.

1. THE APPOINTMENT OF ANCILLARY RECEIVERS UPON THE PETITION OF PRIMARY RECEIVERS HAS BEEN APPROVED BY FEDERAL AND STATE COURTS.

While, for the reasons discussed under the foregoing Point A, we regard it as unnecessary to invoke the rule, we, nevertheless, believe it to be the rule in the Federal courts, that a primary receiver may properly make application to a Federal court for the appointment of ancillary receivers, which application may be granted by the court, as a matter of comity, and that this procedure is not within the prohibition of *Booth v. Clark, supra,* and its companion cases. While the case of *Sterrett v. Second Nat. Bank, supra,* cannot be cited as direct authority for this rule, we believe the language above quoted, from the opinion of this court in that case, infers approval of this rule. So far as we have been able to ascertain, this court has not otherwise had occasion to consider the point.

However, the rule has been approved in a number of cases in the lower Federal courts.

Shinney v. North American Savings, Loan & Building Co., 97 Fed. 9 (C. C. D. Utah);

Ward v. Foulkrod, 264 Fed. 627 (C. C. A., Third Circuit);

Coal & Iron Ry. Co. v. Reherd, 204 Fed. 859 (C. C. A., Fourth Circuit);

Coltrane v. Templeton, 106 Fed. 370 (C. C. A., Fourth Circuit);

Seested v. Bonfils, 33 F. (2d) 185 (D. C. D. Colo.);

Abm. S. See & Depew v. Fisheries Products Co., 9 F. (2d) 235 (C. C. A., Second Circuit);

Brooks v. Smith, et al., 290 Fed. 33 (C. C. A., First Circuit);

Bluefields S. S. Co. v. Steele, 184 Fed. 584, 586-587 (C. C. A., Third Circuit);

Platt v. Philadelphia & R. R. Co., 54 Fed. 569 (C. C. D. Mass.).

In *Shinney v. North American Savings, Loan & Building Co.*, 97 Fed. 9, a primary receiver was appointed by the state court in Minnesota. This receiver then made application for his appointment as ancillary receiver in a proceeding in the state of Utah which had been instituted in the state court and removed to the Federal court. The court said (p. 11):

> "It is admitted that, when a receiver is once appointed by a federal court, other federal courts, through comity, will usually appoint the same person as receiver of the assets within their jurisdiction; but it is argued that, where the appointment is first made by a state court, federal courts are without power to act, in conformity with the principle of comity. No reason for such a distinction is apparent. The state court is of co-ordinate jurisdiction in such matters with the federal court sitting in the same locality. As between the parties, its determination of the insolvency of the corporation and of the need for a receiver is just as conclusive as if had in a federal court. The need for a uniform administration of the assets of an insolvent corporation inheres in the principles of equity, and does not vary with the forum first invoked. It is no unusual thing

for a federal court to appoint an ancillary receiver of assets within its jurisdiction in aid of a primary appointment by a state court of another state."

In *Coltrane v. Templeton,* 106 Fed. 370, in considering the validity of the appointment of ancillary receivers by a Federal court, it was said (pp. 374-375):

> "The bill in this case is styled an 'ancillary bill.' Technically it is not an ancillary bill. The term 'ancillary bill' is applicable to a proceeding growing out of original proceedings in the same court, dependent on such proceedings, and instituted for the purpose of enforcing the judgment, or of rendering complete justice among all the parties in interest. * * * It is more properly an auxiliary bill filed to assist another circuit court in the administration and distribution of assets in a cause properly before it. The circuit courts of the United States, by reason of the comity existing between them, entertain such bills, and give all the assistance in their power to the court in which the bill was filed originally. The extent of the jurisdiction of the courts entertaining such auxiliary bills, and how far they will exert an independent function, is not clearly determined. Mr. Justice Harlan and Judge Jackson, in this circuit, in Mercantile Trust Co. v. Kanawha & O. R. Co. (C. C.) 39 Fed. 337, denied that this court could take jurisdiction in such cases. That case, however, was for the foreclosure of the mortgage covering a railroad in the district of West Virginia, and the bill filed in the circuit court of that district did not contain proper averments justifying such a decree. In the First circuit, in Platt v. Railroad Co. (C. C.) 54 Fed. 569, it is stated that the practice in other districts is to entertain such bills and to act upon them generally *ex parte* and without argument."

In *Coal & Iron Ry. Co. v. Reherd,* 204 Fed. 859, a receiver of a partnership was appointed in Virginia. The receiver then sued a debtor of the partnership in a Federal court in West Virginia. While this suit was pending, the receiver filed a bill for the appointment of ancillary receivers in the Federal court in West Virginia. While the complainants in the primary receivership were named as complainants in the ancillary suit in West Virginia, the primary receiver was the moving party in the filing of the bill. The court said (p. 882):

> "It seems to be settled, therefore, that this receiver, who was appointed in a Virginia court, was not authorized in the outset to institute his action in the United States Court in the Northern District of West Virginia; but the plaintiff undoubtedly, from his subsequent action, undertook to cure this defect by going into Randolph county, W. Va., after the suit had been begun, and filing an ancillary bill, under which an order ratifying his appointment as receiver was made, * * *.
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> * * * * * * * *
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> The question then presented is as to whether this proceeding, taken after the suit had been actually instituted, would have the effect for which it was intended. It occurs to us that in this situation the position of the defendant becomes one of extreme technicality. Undoubtedly, if the plaintiff had filed his ancillary bill in the state court of Randolph county, W. Va., and his appointment as receiver had been ratified, and authority given to bring the suit, the proceeding herein would have been regular and the question of jurisdiction eliminated."

In *Ward v. Foulkrod,* 264 Fed. 627, a receiver was appointed by a Delaware Court of Chancery. This receiver then petitioned a Federal court in Pennsylvania to discharge a receiver for the corporation appointed by that court and to turn over the assets held by that receiver to the petitioner, as Delaware receiver. The court held that the Delaware court had prior jurisdiction over the Federal court in Pennsylvania, but that the Delaware receiver should have applied for the appointment of ancillary receivers in the Federal court in Pennsylvania. The court said (pages 636-637):

> "While a court of the domicile of a corporation may appoint a receiver and authorize him to take possession of its property in a foreign jurisdiction, as did the court in this case, the doctrine seems universal that the appointment confers no legal authority which the receiver can, unaided and alone, exert over the property in that jurisdiction. What then is to be done?
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> * * * * * * * * *
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> This is the rule of comity which impels the court of foreign jurisdiction to render aid to the court of primary jurisdiction in the administration of the corporation's assets by appointing on application ancillary receivers. 23 R. C. L. pp. 140-148. Of course, in yielding to this rule, the court to which application is made has the right to determine for itself who the ancillary receivers shall be. While a court when acting in comity to a distant court of coordinate jurisdiction will be careful to appoint receivers amenable to its control, it usually appoints, for obvious reasons, at least one of the receivers appointed by

the domiciliary court to act with one of its own selection.

The appropriate proceeding in such a case as this (which is readily distinguishable from O'Neil v. Welch, *supra,* and similar cases where the foreign court had no rights to be preserved) is not by application of the receivers appointed by the court of primary jurisdiction addressed to the court of foreign jurisdiction that it summarily discharge its receiver and direct him to turn over to them the corporation's property in his hands, but it is by application to that court praying it to discharge its receiver after he has passed his account and appoint ancillary receivers. When the prayer of such a petition has been granted and ancillary receivers have been appointed, all rights, those of the domiciliary court and of the foreign court, and of all stockholders and creditors of the corporation in both jurisdictions, will fall into their proper places and will be duly cared for and protected in the orderly administration of the estate. If such an application had been made in this case, we apprehend the District Court would have recognized and have acted upon the rules we have discussed. But as the application that was made was not one to which the District Court was required to respond by yielding its jurisdiction in the manner demanded, we find that its action was without error and that its decree should be affirmed.

In order, however, that there shall be no misunderstanding as to what we consider to be the rights of the receivers of the state court in future appropriate proceedings looking to the appointment of ancillary receivers in jurisdictions foreign to that of their appointment, we direct that the order appealed from be modified so as to provide that the dismissal

of the petition shall be without prejudice to the rights of the Delaware receivers to institute appropriate proceedings for the appointment of ancillary receivers for the property of the corporation now in the hands of the receiver appointed by the District Court of the United States for the Eastern District of Pennsylvania."

The rule has been expressly approved in state courts.

Bodge v. Skinner Packing Co., 115 Neb. 41, 211 N. W. 203.

The decision of the Circuit Court of Appeals in the *McCandless* case, in stating the rule that a receiver cannot sue in a foreign jurisdiction and in citing *Booth v. Clark, supra,* fails, we submit, to recognize the significance of the rationale of the decision of this court in that case, and to note the distinction between a suit by a foreign receiver to recover funds or property which will, if recovered, be removed from the jurisdiction to the prejudice of local creditors, and a suit for the appointment of ancillary receivers. This distinction is important, as was recognized by the Circuit Court of Appeals in its decision in the instant case. (69 F. (2d) 233, 235-236.) As said in that decision, the prohibition imposed by the holding in *Booth v. Clark*, to the effect that a receiver could not sue in a foreign jurisdiction, was for the benefit of local creditors and applied only when the attempted suit was for the purpose of removing property from the jurisdiction. The opinion in *Booth v. Clark* so indicated, and

subsequent decisions of this court have confirmed this principle.

Great Western Mining Co. v. Harris, 198 U. S. 561, 49 L. Ed. 1163;

Hale v. Allison, 188 U. S. 56, 47 L. Ed. 380;

Sterrett v. Second National Bank, 248 U. S. 73, 63 L. Ed. 135;

Keatley v. Furey, 226 U. S. 399, 57 L. Ed. 273.

Neither the reason for the rule of *Booth v. Clark,* nor the rule itself has any application to a suit for the appointment of ancillary receivers, since proceedings for the appointment of ancillary receivers are expressly designed for the dual purpose of protecting local creditors and of cooperating with the primary receivership proceedings, as is witnessed by the relief sought in the instant case.

The few Federal cases, cited in this connection by the Circuit Court of Appeals in the *McCandless* decision, are readily distinguishable.

In *Hilliker v. Hale,* 117 Fed. 220, a state receiver sued in a foreign jurisdiction to recover on a statutory stockholders' liability. The court correctly applied the rule of *Booth v. Clark.*

In *Mercantile Trust Co. v. Kanawha & O. Ry. Co.,* 39 Fed. 337, the same complainant in the primary proceedings brought the ancillary proceedings. Thus the point was not raised or considered.

In *Green v. Star Cash & Package Car Co.,* 99 Fed. 656, a Federal District Court in Connecticut refused to appoint

ancillary receivers upon the petition of a primary receiver, but based its refusal upon a ground other than that of the fact that the primary receiver was the petitioner.

In *In re Brant,* 96 Fed. 257, it does not appear who the petitioner for the appointment of a receiver was, or that the application was for an ancillary appointment. The court said that there was no defendant in the suit, and hence no case pending in which a receiver could be appointed.

In *Fairview Fluor Spar & Lead Co. v. Ulrich,* 192 Fed. 894, a creditor, not a primary receiver, filed an *ex parte* bill in a Federal court in Illinois without joining the corporation as a party, and sought the appointment of a receiver ancillary to a receivership proceedings in another Federal court. The court held that since there was no defendant in the suit, the bill was a nullity.

Under the authorities above discussed, we submit that, even if the primary receivers had not been entitled to sue as quasi-assignees, they were entitled to invoke, upon their own petition, the jurisdiction of the Federal court in California, to appoint ancillary receivers in an independent action brought for that purpose, and that the court had the requisite jurisdiction to make such appointment.

This conclusion is necessarily confirmed by the many cases, hereinafter discussed under the next point, which have uniformly held that the Federal courts have jurisdiction to appoint receivers ancillary to a receivership proceeding in another jurisdiction, apart from the usual jurisdictional requirements of the amount involved in the suit and diversity of citizenship.

2. THE FEDERAL COURTS, BY VIRTUE OF COMITY, HAVE JURISDICTION TO APPOINT RECEIVERS ANCILLARY TO A PRIMARY RECEIVERSHIP PROCEEDINGS WITHOUT REGARD TO JURISDICTIONAL REQUIREMENTS.

It has been repeatedly and uniformly held that a Federal court has jurisdiction to appoint receivers ancillary to a receivership proceeding in another jurisdiction, without regard to the usual requisites of jurisdictional amount and diversity of citizenship.

Sands v. E. S. Greeley & Co., 88 Fed. 130 (C. C. A. Second Circuit);

Shinney v. North American Savings, Loan & Building Co., 97 Fed. 9 (C. C. D. Utah);

Rust v. United Waterworks Co., 70 Fed. 129 (C. C. A. Eighth Circuit);

Bluefields S. S. Co. v. Steele, 184 Fed. 584 (C. C. A. Third Circuit);

Ward v. Foulkrod, 264 Fed. 627 (C. C. A. Third Circuit);

Bluefields S. S. Co. v. Steele, 192 Fed. 23 (C. C. A. Third Circuit);

Seested v. Bonfils, 33 F. (2d) 185 (D. C. D. Colo.);

Trustees System Co. of Pennsylvania v. Payne, 65 F. (2d) 103 (C. C. A. Third Circuit);

Walker v. United States Light & Heating Co., 220 Fed. 393 (D. C. S. D. N. Y.);

Reed v. Alaska Mines Corporation, 6 Alaska 370.

Federal courts will make such ancillary appointment not only when based upon proceedings in other Federal courts,

but also when based upon primary proceedings in a state court.

Sands v. E. S. Greeley & Co., 88 Fed. 130;
Shinney v. North American Savings, Loan & Building Co., 97 Fed. 9;
Rust v. United Waterworks Co., 70 Fed. 129;
Seested v. Bonfils, 33 F. (2d) 185.

The theory of these cases is that an order, appointing a receiver in a court of primary jurisdiction, is entitled to full faith and credit, and that the Federal court will make an appointment of receivers ancillary to the primary proceedings by virtue of the doctrine of comity.

The same principle has been applied in the state courts where, under the doctrine of comity, one court will appoint receivers ancillary to receivership proceedings in another state, without regard to the question of jurisdiction.

Southern Colonization Co. v. Parten, 83 Fla. 300, 91 So. 263;
Bodge v. Skinner Packing Co., 115 Neb. 41, 211 N. W. 203.

It is apparent, under these cases, that, in this connection, the Federal courts are exercising an inherent equity jurisdiction to which the usual requirements of jurisdictional amount and diversity of citizenship are not requisite. To hold that the Federal courts have no jurisdiction to appoint ancillary receivers upon the application of primary receivers, for the reason that such jurisdiction is not expressly conferred by the Constitution of the United States, or by the pertinent statutes of Congress, would have the result of overruling the immediately above mentioned cases and of denying the principle upon which those decisions are based.

CONCLUSION.

Cogent practical considerations for the affirmance of the judgment of the Circuit Court of Appeals in this case have been presented to this court in petitioner's brief and petitioner's reply brief in the *McCandless* case, and it is therefore unnecessary to reiterate them here.

We submit that, aside from such practical considerations, and apart from the questions presented in *McCandless v. Furlaud,* the primary receivers, for the reasons herelu discussed, properly instituted and were entitled to maintain the action for the appointment of ancillary receivers in the Federal court in California, and that the judgment of the Circuit Court of Appeals should be affirmed, with costs.

Respectfully submitted,

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